

Order

Michigan Supreme Court
Lansing, Michigan

January 29, 2008

Clifford W. Taylor,
Chief Justice

ADM File No. 2006-32

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Proposed Amendment of
Rule 2.504 of the
Michigan Court Rules

On order of the Court, this is to advise that the Court is considering an amendment of Rule 2.504 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing by the Court before a final decision is made. The notices and agendas for public hearings are posted on the Court's website, www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Deletions are indicated by strikethrough and additions by underline.]

Rule 2.504 Dismissal of Actions

(A) [Unchanged.]

(B) Involuntary Dismissal; Effect.

- (1) If ~~the plaintiff~~ a party fails to comply with these rules or a court order, upon motion by an opposing party, or sua sponte, the court may enter a default against the noncomplying party or a dismissal of the noncomplying party's action or claims. ~~a defendant may move for dismissal of an action or a claim against that defendant.~~
- (2) In an action, claim, or hearing tried without a jury, after the presentation of the plaintiff's evidence the defendant, or the court on its own initiative, without waiving the defendant's right to offer evidence if the motion is not

granted, may move for dismissal on the ground that on the facts and the law the plaintiff has ~~shown~~ no right to relief. The court may then determine the facts and render judgment against the plaintiff, or may decline to render judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in MCR 2.517.

- (3) Unless the court otherwise specifies in its order for dismissal, a dismissal under this subrule or a dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for failure to join a party under MCR 2.205, operates as an adjudication on the merits.

(C)-(E)[Unchanged.]

Staff comment: This proposed amendment would allow a court, on motion of any party or sua sponte, to enter a default or dismiss a party's action or claim for failure to comply with the rules or a court order. The current rule allows such actions by the court only if the plaintiff makes such a motion. The proposed amendment would also allow the court to dismiss on its own initiative an action in which the plaintiff, on the law and the facts presented, is not entitled to relief, and would make the rule applicable to claims and hearings in addition to actions. The rule currently allows only the defendant to make such a motion.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court Clerk in writing or electronically by May 1, 2008, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2006-32. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 29, 2008

Corbin R. Davis
Clerk